of a debt owing by him to the bank. Both believed at the time that the bank was solvent, and the transaction was executed in good faith. A short time later the bank made an assignment for the benefit of creditors. *Held,* that the selling stockholder received, in effect, a portion of the bank's capital, that the purchase was to the prejudice of the bank's creditors by diminishing their chances of collecting their claims and that, holding the same as he did subject to the superior equities of the creditors, the assignee could recover it for their benefit. *Fitzpatrick* v. *McGregor* (1909), — Ga. —, 65 S. E. 859.

FISH, C. J., reviews many authorities and renders an opinion which is especially instructive on the right of a corporation to purchase its own stock. In England it is uniformly held that a corporation cannot without express statutory permission purchase its own capital stock. See the leading case of *Trevor* v. *Whitworth,* L. R. 12 App. Cas. 409, which reviews the English decisions on this point. In the United States most of the courts hold that such a purchase is not objectionable if the rights of the creditors are not impaired thereby. See MICH. L. REV. 407, where many cases on the English and American rules are cited. The special capacity theory as to corporate powers would seem to make the purchase by a corporation of its own shares ultra vires unless such an act could be sustained as falling within one of the implied corporate powers. Save in a few exceptional cases, it is difficult to see why such a power should be implied. It is, however, quite properly implied when such a purchase is necessary to save a debt owing by the selling stockholder to a solvent corporation, and it is uniformly so held. *Draper* v. *Blackwell, etc.,* 138 Ala. 182; the principal case and *Chillicothe, etc. Bank* v. *Fox,* 3 Blatchf. 431. If the corporation was insolvent at the time of the purchase it is clearly an invalid transaction and will be set aside. *Alexander* v. *Relfe,* 74 Mo. 495; *Currier* v. *Lebanon Slate Co.,* 56 N. H. 262. It seems that even in those states where the right of a corporation to purchase its stock is clearly established, the corporate creditors who are injured thereby can have the purchase declared voidable in their behalf. *Clapp* v. *Peterson,* 104 Ill. 26. The Georgia court properly held that if the bank was in fact insolvent at the time of the purchase, no amount of good faith would cut off the rights of the creditors and that the mere fact that the selling stockholder and the president of the bank thought the bank solvent did not prevent the application of the rule that the capital stock of an insolvent corporation is, as against the stockholders, a trust fund for the benefit of creditors and could not be withdrawn by a stockholder so as to divest the creditors of the right to it in satisfaction of their claims.

CORPORATIONS.—OWNERSHIP OF STOCK.—UNLAWFUL PLEDGE.—RIGHTS OF PLEDGEE.—Plaintiff, through her husband as agent, deposited with a broker, who was her husband's creditor, certain stock certificates on the back of which there was a blank assignment, reciting a transfer and a power of attorney and giving the right to sell, transfer and assign, to secure the debt of her husband. Defendant bank accepted the stock so pledged as security for a loan to the broker, in entire good faith and believing the broker to be the owner of the stock. Plaintiff knew nothing of the pledge to the bank.

The broker became insolvent and the defendant bank sold the stock and applied the proceeds of the sale to the payment of its claim. *Held*, that plaintiff could recover the value of the stock from the defendant, and was not estopped from asserting her claim. *Williams* v. *Merchants' National Bank of Baltimore* (*Garnishee*) (1909), — Md. —, 72 Atl. 1114.

The court held that such an assignment and such powers of attorney did not clothe the broker with the indicia of absolute ownership and that one accepting the stock from the broker was chargeable with notice of the rights of the real or original owner. The decision is in accord with the other Maryland cases on the question. *Taliaferro* v. *First National Bank*, 71 Md. 200, 17 Atl. 1036; *German Savings Bank* v. *Renshaw*, 78 Md. 475, 28 Atl. 281. In the latter case a distinction is made between a *bona fide pledgee* and a *bona fide purchaser*. The latter, it seems, would get a good title even in Maryland. The principal case is, however, opposed in its reasoning at least to a number of decisions in other states, among them being the leading case of *McNeil* v. *Tenth National Bank*, 46 N. Y. 325, 7 Am. Rep. 341, WILGUS CASES, CORP. 1674. Here, under similar circumstances, the court of appeals of New York held that the broker was clothed with the indicia of ownership and that his pledgee was as fully protected in his rights as if he had dealt with the absolute owner of the stock. The question is one difficult to solve, but it is believed that the *McNeil* case arrived at the most equitable solution of the problem. It would seem that the real owner, rather than the *bona fide* pledgee of the stock, should bear the loss and this not on the ground that the certificates of stock are quasi negotiable, but as a result of the application of the well settled principle that where one of two innocent parties must suffer as a result of the fraud of a third party, the loss should fall upon him who enabled the third party to perpetrate the fraud. It is the real owner who, in these cases, has enabled the broker to repledge the property as the broker's own, and it would seem to be more in accord with justice to hold the original owner estopped from coming into court and denying that which he has, to all except the fraudulent broker, impliedly affirmed. This rule would make the owners of stock more careful in selecting their brokers and pledgees. For cases protecting the rights of the *bona fide* pledgee see, in addition to the *McNeil* case, *Shattuck* v. *American Cement Co.*, 205 Pa. 197, 54 Atl. 785, 97 Am. St. Rep. 735; *Wood's Appeal*, 92 Pa. 377; *Jarvis* v. *Rogers*, 13 Mass. 105; *Westinghouse* v. *German National Bank*, 196 Pa. St. 249, 46 Atl. 380; *Dueber Watch Case Mfg. Co.* v. *Daugherty*, 62 Ohio St., 589, 57 N. E. 455; *Gass* v. *Hampton*, 16 Nev. 185; *Otis* v. *Gardner*, 105 Ill. 436; *Fatman* v. *Lobach*, 1 Duer. 354. The *bona fide* purchaser is also protected: *Krause* v. *Woodward*, 110 Cal. 638, 42 Pac. 1084; *Strickland* v. *Leggett*, 21 N. Y. Supp. 356; *Thompson* v. *Toland*, 48 Cal. 99; *Moore* v. *Metropolitan Bank*, 55 N. Y. 41; *Prall* v. *Tilt*, 28 N. J. Eq. 479; *Nelson* v. *Owen*, 113 Ala. 372, 21 South. 75. For other cases in which the doctrine of estoppel was applied as against the real or original owner see *Cherry* v. *Frost*, 7 Lea (Tenn.) 1; *Mount Holly, Lumberton and Medford Turnpike Co.* v. *Ferree*, 17 N. J. Eq. 117.